

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

In the Matter of the Petition of)	
)	Docket No. 04-0653
USCOC of Illinois RSA #1, LLC)	
USCOC of Illinois RSA #4, LLC)	
USCOC of Rockford, LLC)	
USCOC of Central Illinois, LLC)	
)	
For Designation as an Eligible)	
Telecommunications Carrier)	
Under 47 U.S.C. § 214(e)(2))	

**OPPOSITION TO MOTION FOR SEVERANCE
AND TO MAKE MORE DEFINITE AND CERTAIN**

USCOC of Illinois RSA #1, LLC, USCOC of Illinois RSA #4, LLC, USCOC of Rockford, LLC, and USCOC of Central Illinois, LLC (collectively, “U.S. Cellular”), by its counsel, hereby opposes the Motion for Severance and to Make More Definite and Certain (“Motion”), filed by Bergen Telephone Company, Glasford Telephone Company Leaf River Telephone Company, Montrose Mutual Telephone Company, New Windsor Telephone Company, Oneida Telephone Exchange, Sharon Telephone Company, Viola Home Telephone Company and Woodhull Community Telephone Company (“Intervenors”), in the above-captioned case. In support of this Opposition, the following is respectfully stated:

I. U.S. Cellular’s Petition Properly Requests One ETC Service Area in Illinois

Intervenors mischaracterize Section 214 of the Federal Act, 47 U.S.C. §214, by claiming that each competitive ETC (“CETC”) must apply for a separate ETC service area for each rural ILEC. They cite no case in support of their proposition. In prosecuting over 35 ETC designation cases across the country, undersigned counsel is not aware of a single state that has adopted

Intervenors' position. In our experience, state and federal regulators have reached exactly the opposition conclusion.

Section 214(e)(2) of the Act authorizes a state commission to “designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier *for a service area designated by the State commission.*” 47 U.S.C. § 214(e)(2). Section 54.207(a) of Title 47, Code of Federal Regulations, defines service area as “*a geographic area established by a state commission* for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.” 47 C.F.R. § 54.207(a).

Plainly, both the statute and the rules authorize states and the FCC to designate an ETC service area to a qualifying applicant, whether it be an ILEC or a CETC. That is, this proceeding will define an ETC service area for U.S. Cellular. Nothing in the rules requires a CETC's service area to be coterminous with that of an ILEC, and in numerous cases that is exactly how designations have been made. Recently, for example, the FCC designated Virginia Cellular for an ETC service area that encompassed portions of non-rural ILEC areas, complete rural-ILEC study areas, and portions of rural-ILEC study areas. Under Section 214 of the Federal Act, where the CETC proposes to serve less than an entire ILEC study area, the ILEC's *service area* must be redefined to be something other than the study area, but such redefinition need not match the CETC's ETC service area.¹

To cite just a few examples:

¹ 47 U.S.C. Section 214(e)(5).

- Virginia Cellular has an ETC boundary that is (with two exceptions not here relevant) an ETC service area that is coterminous with its FCC-licensed boundaries in Virginia.²
- Midwest Wireless Communications LLC (“Midwest”) and Rural Cellular Corp. (“RCC”) in Minnesota have each been designated an ETC service area that is coterminous with their FCC-licensed boundaries, the commission finding that it is in the public interest to designate these carriers even in portions of rural-ILEC service areas.³
- The Washington Utilities and Transportation Commission has designated U.S. Cellular and other carriers in ETC service areas that are coterminous with their FCC-licensed boundaries, finding that it is in the public interest to designate these carriers even in portions of rural-ILEC service areas.⁴
- The Wisconsin Commission has designated U.S. Cellular and several other carriers in ETC service areas that are coterminous with their FCC-licensed boundaries, finding that it is in the public interest to designate these carriers even in portions of rural-ILEC service areas.⁵
- The Maine Commission has designated RCC as an ETC for a service area that is coterminous with its FCC-licensed boundaries, finding that it was in the public interest to designate RCC even in portions of rural-ILEC service areas.⁶

In September, the Vermont Public Service Board set out perhaps the most cogent decision on this point in its order designating RCC as and ETC in rural ILEC areas. The PSB’s discussion follows:

Federal law defines “service area” to mean:

² See *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1580-81.

³ See *Midwest Wireless Communications, LLC*, OAH Docket No. 3-2500-4980-2, PUC Docket No. PT6153/AM-02686 (March 19, 2003) (“Midwest Minnesota Order”); *RCC Minnesota, Inc.*, Docket No. OAH Docket No. 3-2500-15169-2, PUC Docket No. PT6182,6181/M-02-1503 (Minn. PUC, June 30, 2003) (“RCC Minnesota Order”).

⁴ See *RCC Minnesota, Inc.*, Docket No. UT-023033 at pp. 14-15 (Wash. Util. & Transp. Comm’n Aug. 14, 2002); *AT&T Wireless PCS of Cleveland et al.*, Docket No. UT-043011 at pp. 10-11 (Wash. Util. & Transp. Comm’n, April 13, 2004) (“AT&T Washington Order”).

⁵ See, e.g., *NCPR, Inc, d/b/a Nextel Partners*, Docket No. 8081-T1-101 (Wisc. PSC Sept. 30, 2003) (“Nextel Wisconsin Order”).

⁶ See *RCC Minnesota, Inc., SRCL Holding Company, Saco River Communications Corp.*, Docket No. 2002-344 (Maine PUC, May 13, 2003) (“RCC Maine Order”).

a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. *In the case of an area served by a rural telephone company, "service area" means such company's "study area"* unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.

The ITCs argue that the italicized language, relating to rural telephone companies, requires that RCC's service area be coterminous with the ITC's own "study areas."

The ITCs correctly identify the relevant statutory and regulatory sections in their analysis, but they have failed to properly interpret that language. A service area is a geographic area that is established by a state commission for the purpose of determining universal service support and obligations. As a general rule, the Board has broad discretion to define a service area for any carrier seeking ETC designation, including both incumbent and competitive carriers.

The ITCs' argument focuses on the exception to this general rule, italicized above. ***We conclude that the exception applies only when a rural telephone company seeks ETC designation for itself.*** Congress may have had reasons to prevent state commissions from breaking up or aggregating existing rural ILEC "study areas," which traditionally were the units for which universal service support was paid. We see no reason to believe, however, that this language applies to a competitive ETC. On the contrary, a CETC like RCC doesn't even have a "study area" because it isn't an incumbent and has never received support that traditionally was tied to study areas. Therefore, we conclude that the italicized language above clearly *does not* apply to a case, such as this one, where a competitive carrier seeks ETC designation. Therefore the general rule applies, and this Board has broad discretion to assign a service area.

The ITC's arguments also create numerous policy difficulties. The effect of the ITC's recommendation is that where support is based upon facts measured at a certain place, support must also be spent in that place. We reject this argument. Congress might have done this if federal support were actually *collected* from customers in the ITC areas where it is distributed. Support, however, is collected nationally from all industry sectors, including the wireless industry.

Technologically, the ITCs recommendation would produce wasteful expenditures, because it fails to recognize that wireless networks serve at a distance. Plant located outside an ITC's existing service area can still

provide service within that area, and vice-versa. The point is particularly significant in Vermont because some of the ITCs serve only a single exchange area or “wire center” that only is a few miles across. For this reason, ten service areas, each with their own accounting, could produce substantial duplication of facilities and ultimately an inefficient wireless network.

Nor would ten service areas make economic sense. Wire center boundaries were defined long ago based on two things: the technical limits of wireline technology; and the economics of wireline technology. Neither factor today has much bearing on where wireless investments are needed in Vermont. As RCC's witness Kohler put it, wire center boundaries “don't have any meaning in [the wireless] business.” Moreover, if there were ten service areas, RCC could not invest any support in a high-cost area where it had no customers, because there would be no support generated in that area.

Ten study areas would be likely to hamper timely and effective investment. Federal support would build up in ten separate bank accounts, and could not be transferred between accounts to meet more pressing needs elsewhere. One area could get a new cell site only when its capital reserve grew sufficiently, possibly a matter of years or even decades. In the interim, large amounts of support would be left unused, providing no benefit to the state. Under the best of circumstances this would delay construction in many areas. At worst, some areas might never get service if they generate little federal support. We conclude that a single service area will more promptly result in meeting the needs of the state as a whole.

Establishing ten service areas would essentially create significant administrative burdens. It would require RCC to keep ten sets of accounts on universal service revenue and capital expenditures. This would obviously be a significant burden, but in the end accuracy may be unattainable, regardless of the effort expended. Many of RCC's facilities, such as backhaul facilities and switches, are network facilities and are not properly attributable to one cell site, much less to one wireline exchange. (footnotes omitted, emphasis ours).⁷

We have included extended quotations of the Vermont Board on this point to foreshadow where the Intervenors are going. While their opening shot in this proceeding is directed at

⁷ Petition of RCC Atlantic Inc. for Designation as an Eligible Telecommunications Carrier in Areas Served by Rural Telephone Companies Under the Telecommunications Act of 1996, Docket No. 6934 (Vt. Pub. Serv. Bd., entered Sept. 29, 2004) (“RCC Vermont Order”) at pp. 51-53.

“bootstrapping” and purported evidentiary confusion, their real intent is to cause the Commission to segregate U.S. Cellular’s service area into separate and small individual ETC designations, each independently responsible for USAC reporting, for compliance, and for segregating and investing universal service support by rural ILEC. Neither the FCC nor any state has adopted Intervenors’ position.⁸

In sum, the Intervenors’ position is not grounded on law, it is grounded in a strategy of attempting to complicate this and every other ETC designation in Illinois’ rural ILEC areas to such an extent that no petitioner would accept a grant on their terms. Thus, it should be squashed here at the outset, before substantial additional time and Commission resources are wasted.

II. U.S. Cellular’s Petition is Properly Captioned.

A short discussion of U.S. Cellular’s corporate structure can alleviate the Intervenors’ apparent confusion. U.S. Cellular has applied for ETC status in the name of individual holding companies. The holding companies captioned above are the FCC licensees in Illinois and each is certificated by the state to provide commercial mobile radio service. The holding companies do not operate separate wireless networks in Illinois. They do not have separate officers and directors who are directing separate operations and making separate decisions concerning their individual operations.

The individual holding companies are all controlled by a parent, United States Cellular Corporation (“USCC”). The legal existence of each subsidiary corporation is solely for the parent company’s internal operational needs. USCC directs the operation of a single, integrated wireless network operation in Illinois. If designated as an ETC, USCC will continue to do so. It

will not operate separate operations or otherwise segregate its business for purposes of complying with universal service rules or investing universal service support. No state or the FCC has ever required such and U.S. Cellular would likely decline to accept a grant under such conditions.

There is nothing confusing about U.S. Cellular's petition. In numerous other cases, designations have been made in the same manner. For example, NPCR, Inc. d/b/a Nextel Partners ("Nextel") was recently designated by the FCC as an ETC in seven separate states.⁹ In each of those states, Nextel provides cellular service pursuant to dozens of market-based and site-specific licenses held by various Nextel subsidiaries, and the FCC saw no need to create multiple proceedings.¹⁰ In Maine, RCC was designated in a single proceeding involving multiple operating subsidiaries.¹¹

Most pertinently, when USCC applied for ETC status in Washington, with the parent company (USCC) as the petitioner, rural ILECs complained that USCC was not a carrier and therefore not eligible to be granted ETC status.¹² In response, USCC amended its petition to name the individual subsidiary companies as petitioners, which amendment the Commission

⁸ Should the Commission nonetheless wish to designate U.S. Cellular for separate service areas, that decision would not require the wasteful exercise of a separate public interest analysis for each service area or separate dockets.

⁹ *NPCR, Inc. d/b/a Nextel Partners*, 19 FCC Rcd 16530 (2004).

¹⁰ For example, Nextel's Florida ETC petition to the FCC stated: "The [FCC]'s ULS database contains a record of the many 800 MHz Economic Area ("EA") and site-based licenses pursuant to which Nextel Partners offers its service in Florida. The licenses are held by wholly-owned subsidiaries of Nextel Partners Operating Corp., which also owns 100% of Petitioner NPCR, Inc. (Nextel Florida ETC Petition, filed Sept. 16, 2003) at p. 1 n.1.

¹¹ *See* RCC Maine Order, *supra*.

¹² United States Cellular Corporation, USCOC of Washington RSA-4, Inc.; Western Sub-RSA Ltd. Partnership; McDaniel Cellular Telephone Company; Oregon RSA No. 2 Limited Partnership; United States Cellular Operating Co. of Richland; Yakima, Washington MSA Ltd. Partnership; Docket No. UT-970345, Third Supplemental Order Granting Petition for Designation as an Eligible Telecommunications Carrier (Wash. Util. & Transp. Comm'n, Jan. 27, 2000) ("USCC Washington Order").

accepted.¹³ The Washington Commission designated an ETC service area for USCC and each of several subsequent ETC petitioners. The situation in Washington was precisely the same as is presented here. Accordingly, we attach the Washington decision as Exhibit A for the Commission's convenience.¹⁴

Intervenors make a vague claim that one petitioner would “bootstrap” another petitioner or “piggy back” on one another's qualifications. Given that USCC controls each petitioner and operates a single network in the state, there can be no bootstrapping, or piggybacking. Should the Commission request, U.S. Cellular would amend its petition to specify USCC as the petitioner in this case, obviating the entire issue. It matters not to USCC which entity holds the designation.

III. Intervenors Confuse the Public Interest Analysis With That Required to Redefine Rural ILEC Service Areas.

Intervenors claim that the Commission must make a separate determination that the public interest would be served for each individual rural ILEC. They offer no support for this statement, and we are not aware of a single state or FCC case that has adopted Intervenors' position. It appears as though Intervenors have confused two related issues to be dealt with in this proceeding.

In literally dozens of cases decided by the states and the FCC, one fact specific public interest analysis has been performed. The operative question is not whether individual ILECs will be harmed by a designation, but whether the petitioner's designation would serve the public interest – specifically, whether persons living in the proposed ETC service area will benefit from

¹³ *Id.* at para. 11.

¹⁴ *See also* RCC Minnesota Order, *supra* (designating two affiliates for one ETC service area); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, DA 02-1252 (Wireline Comp. Bur., 2002), *recon. pending on other grounds* (FCC designated “joint petition” of two affiliated companies for service areas in Alabama).

the designation. The focus is on consumers, not individual companies.¹⁵ Most of the issues to be examined relate to the entire proposed ETC service area, not to a single ILEC area. Regulators consistently analyze the public interest one time – with respect to the ETC service area proposed by the petitioner.¹⁶ Once U.S. Cellular makes a prima facie case that designation would benefit its ETC service area, individual ILECs are free to challenge that designation, either in total, or with respect to an individual service area.

A wireless CETC petitioner does not operate separate networks in individual rural ILEC service areas. It operates a single network that covers a wide area. A wireless network architecture is different from wireline operations in terms of its wide coverage area, wider local calling areas, mobility and roaming capabilities, and its consumer offerings. These all require analysis of the petitioner’s operations, offerings, and consumer benefits. Nothing about analyzing the public interest one time in Illinois prevents any individual ILEC from rebutting U.S. Cellular’s showing. But that does not mean that the Commission must go through the entire public interest analysis for each individual company, or, as the Intervenors suggest, open a separate docket for each designation. This could only occur if each separate entity were operating separate networks, as are the ILECs. It borders on absurd to suggest that U.S. Cellular must bring the same witnesses to multiple hearings to prove repeatedly that its service offers – for example, the advantages of mobility and wide local calling areas.

It is possible that Intervenors are confusing the public interest analysis with service area redefinition. Where U.S. Cellular does not serve an entire rural ILEC study area, it will be

¹⁵ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (D.C. Cir. 2000).

¹⁶ *See, e.g.*, RCC Vermont Order, *supra*, AT&T Washington Order, *supra*; United States Cellular Corp., Docket 1084 (Oregon PUC, June 24, 2004) (“USCC Oregon Order”); USCC Washington Order, *supra*, Virginia Cellular, *supra*, USCC Wisconsin Order, *supra*; Midwest Minnesota Order, *supra*; RCC Minnesota Order, *supra*; NECC Colorado, Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm’n Dec. 15, 2000) (“SBI Arizona Order”). We would be pleased to provide copies of these decisions upon request.

necessary for the state to redefine the affected rural ILEC's *service area* pursuant to 47 C.F.R. § 54.207(c).¹⁷ In determining whether to redefine a rural ILEC service area, the Commission must conduct a three-part analysis for each affected rural ILEC, to determine whether the redefinition would raise cream skimming concerns, whether there would be an undue administrative burden, and whether the ILEC's status as a rural telephone company would be adversely affected. That analysis has been undertaken by the FCC and other states on the basis of individual rural ILECs.¹⁸

¹⁷ Service area redefinition only applies to rural ILECs, not nonrural ILECs.

¹⁸ See, e.g., *Virginia Cellular, supra*, USCC Oregon Order, *supra*.

IV. Conclusion

This Commission is empowered to designate U.S. Cellular for an ETC service area that it has requested – that is – throughout the area set forth in its Petition. Intervenors’ attempt to convolute this proceeding has no legal basis and must be rejected. U.S. Cellular respectfully requests the Commission to deny the relief requested in the Motion in its entirety.

Respectfully submitted,

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USCOC of Illinois RSA #4, LLC
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December 16, 2004

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Exhibit A

USCC's Washington ETC Decision

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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)	
For Designation as an Eligible)	
Telecommunications Carrier)	
Under 47 U.S.C. § 214(e)(2))	

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on this date we have filed with the Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, the Response of USCOC of Illinois RSA #1, LLC; USCOC of Illinois RSA #4, LLC; USCOC of Rockford, LLC; and USCOC of Central Illinois, LLC (collectively "U.S. Cellular") to Motion For Severance and to Make More Definite and Certain in the above captioned matter.

USCOC OF ILLINOIS RSA # 1, LLC
USCOC OF ILLINOIS RSA # 4, LLC
USCOC OF ROCKFORD, LLC
USCOC OF CENTRAL ILLINOIS, LLC

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, G. Darryl Reed, an attorney, certify that I caused copies of the Response of USCOC of Illinois RSA #1, LLC; USCOC of Illinois RSA #4, LLC; USCOC of Rockford, LLC; and USCOC of Central Illinois, LLC (collectively "U.S. Cellular") to Motion For Severance and to Make More Definite and Certain to be served on each of the parties listed on the service list by U.S. Mail and e-mail this 16th day of December, 2004.

One of Its Attorneys for
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